IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Revision No.100 of 2003.

Date of decision: 8.10.2007.

Babu Ram ….Petitioner.

-Versus-

Sudershan Kumar and others ….Respondents

Coram:

The Hon'ble Mr.Justice Deepak Gupta, Judge.

Whether approved for reporting? No

For the Petitioner: Mr.Ramakant Sharma, Advocate.

For Respondents: None for the respondents.

Deepak Gupta, J.(Oral)

This Civil petition under Section 115 of the Code of Civil Procedure is directed against the order dated 25th November, 2002 passed by learned Sub Judge, Ist Class, Nurpur, District Kangra whereby he has permitted respondents 3 to 8 to be impleaded as plaintiffs 3(a) to 3(f) in the suit.

Briefly stated the facts of the case are that on 17.3.1998 a suit for declaration was filed by Sudarshan Kumar, Chaman Lal both sons of late Sh.Hans Raj and Jaggannath and Tulsi Ram both sons of late Sh.Dano against one Babu Ram the present petitioner. The suit proceeded further and the plaintiffs evidence was recorded. On 2.8.2000 when the suit was listed for recording the defendant's evidence, counsel for the plaintiffs stated that the plaintiff No.3 had died and thereafter the case was listed for 9.2.2000. The matter

could not be taken up on 9.2.2000 and finally came up before the Court on 4.10.2000 when again it was adjourned to 7.11.2000. On 7.11.2000 counsel for the plaintiffs again made a statement that plaintiff No.3 has died and he may be granted time to file application to bring on record the LRs of plaintiff No.3. This application was filed on 20.12.2000.

I have perused the said application. In the application it is stated that the plaintiff No.3 Jaggannath signed the power of attorney and plaint but he died in between the signing of the plaint and institution of the suit. It was further stated that the plaintiff No.3 had died on 6.1.1998. A perusal of the death certificate of plaintiff No.3 which has been filed in the trial Court by the applicants-respondents 3 to 8 shows that in fact plaintiff No.3 Jaggannath had expired on 1.1.1998 and the factum of his death was registered on 6.1.1998. The plaint was typed at Nurpur on 16.3.1998. It is purported to be verified on 16.3.1998 at Nurpur itself. It is obvious that the signatures of Jaggannath on the plaint could not have been obtained on 16.3.1998 since he had expired on 1.1.1998.

The learned trial Court has gravely erred and has exceeded its jurisdiction in allowing the application. He has not gone into the question as to whether the application was bonafide or not. The facts stated in the application are a web of lies. Though the plaint is typed on 16.3.1998 and is verified on that date itself the plaintiffs would have the Court believe that Jaggannath had signed the plaint prior to his death. This story is totally unbelievable.

Therefore, without going into the question whether an application under Order 1 Rule 10 CPC was maintainable or not, in the facts and circumstances of the case, it is apparent that the applicants approached the trial Court with totally false averments. No person who makes false averments should be granted any such relief. The trial Court has gravely erred in believing the facts stated in the application which on the face of it are against the material on record.

Keeping in view the aforesaid discussion the Revision Petition is allowed and the impugned order permitting the plaintiffs 3(a) to 3(f) to be added as parties is set-aside. The Registry is directed to return the record of the lower Court at the earliest.

October 8, 2007. **(Deepak Gupta),**
PV **Judge**